



August 9, 2012

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VIA EMAIL AND REGULAR MAIL

Alex Gurza
Deputy City Manager
Office of the City Manager, City of San Jose
200 E Santa Clara St
San Jose, CA 95113

**Re: San Jose POA's Step 4 Grievance/Demand for IMMEDIATE
ARBITRATION re Outsourcing of Background Investigations
File No. 038780**

Dear Alex:

I write to follow-up both the City's denial of the POA's Step 3 grievance on the above-referenced subject, which we received yesterday afternoon, and my initial letter in response, which demanded that the City cease and desist from going forward with its plan to contract out background investigations.

We had intended to file a Step 4 grievance. However, based on your statement that the City will proceed "with performing backgrounding using contractual services" while the POA grievance is pending, and while the parties potentially go through impasse resolution procedures, the POA is converting this to a demand for immediate arbitration under section 25.6 of the parties' Memorandum of Agreement.

The POA believes that the City's proposed action amounts to "threatening to take action in violation of the Agreement in so short a period of time as to disallow the [POA] from proceeding within the time limits of this Article," qualifying this grievance for the immediate arbitration procedures. (I incorporate by this reference the POA's Step 3 grievance, which provides the background facts, etc., and is attached. As your letter, yesterday, shows, the City is well aware of the nature the parties' dispute.)

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In order to have this matter scheduled for arbitration as soon as possible after the 14-day cooling off period contemplated in the MOA, please advise me at your earliest opportunity who will be handling this matter for the City.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

cc: Chris Moore, Chief of Police
Edgardo Garcia, Deputy Chief of Police
Jim Unland, President, SJPOA
John Robb, Vice President, SJPOA
Franco Vado, Chief Financial Officer, SJPOA



July 26, 2012

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Alex Gurza
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200 E Santa Clara St
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**Re: This Letter and Grievance re Outsourcing of Background
Investigations
File No. 038780**

Dear Alex:

Thank you for your letter dated July 24, 2012, which articulated the City's intent to push forward with its plan to outsource background investigations. As you acknowledge, the parties have philosophical and legal disagreements about whether the City can or should move forward with its proposal.

The MOA entitles the City to civilianize/outsource up to a maximum of 20 positions. That is confirmed by the bargaining history of Article 51. We understand that the City has already civilianized/outourced 19 positions. (Our still pending information request seeks to verify the number of positions civilianized/outourced.)

Accordingly, I lay out below what the City should consider a grievance. It explains that the City **cannot** proceed with civilianizing/outourcing more than 20 positions and that cap would be breached by outsourcing background investigations.

The grievance should be processed and resolved before taking any further steps in the impasse resolution procedures.

If the grievance is *ultimately* denied, then the POA will want to proceed through the impasse resolution procedures, as contemplated in your letter.

The grievance is as follows: The San Jose Police Department's intention to move ahead with the outsourcing of background investigations, a

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function currently being carried out by police officers represented by SJPOA, violates Section 51.1 ("The city has the discretion to contract out/civilianize up to twenty positions during the term of this agreement"). Based on representations by City Officials, at formal meetings, and the POA's general knowledge, we understand that 19 of the 20 positions have previously been contracted out or civilianized. The POA understands that the outsourcing of background investigations would constitute the equivalent of more than one full-time position.

This reasoning was laid out to you at our recent meeting on this subject, on June 28, 2012.

By way of remedy, the POA asks that the City cease and desist from implementing the civilianization of background investigations. (The POA reserves the right to seek supplemental remedies if this dispute is arbitrated.)

This grievance is being presented to you, in the first instance, at Step 3 because the POA believes that no one below your level has the authority to grant the grievance.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

cc: Jennifer Schembri, Assistant to City Manager
Jim Unland, President, SJPOA
John Robb, Vice President, SJPOA
Franco Vado, Chief Financial Officer, SJPOA